

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Con.Case(C).No. 1397 of 2007(S)

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AGAINST THE JUDGEMENT IN RSA.1005/2006

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PETITIONERS:

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1. DR.VARGHESE MUNDACKAL, AGED 65 YEARS,  
S/O.JOSEPH, MUNDACKAL HOUSE, KARINGAZHA,  
KOTHAMANGALAM.
2. EMTEX INTERNATIONAL LTD.,  
REP.BY MANAGING DIRECTOR DR.VARGHESE MUNDACKAL,  
DIWANS ROAD, ERNAKULAM, COCHIN-16.

BY ADV. DR.VARGHESE MUNDACKAL

RESPONDENTS:

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1. LOOKOSE NELLIKATTIL, AGED 66,  
S/O.VARKEY, ENLLIKATIL HOUSE, KARINGAZHA,  
CHELAD PO, KOTHAMANGALAM.
2. VAVACHAN, AGED 38 YEARS,  
S/O.LOOKOSE, NELLIKATTIL HOUSE, KARINGAZHA,  
CHELAD PO, KOTHAMANGALAM.
3. JOSE, AGED 50 YEARS,  
S/O.KOCHAPPAN, NELLIKATTIL HOUSE,  
KARINGAZHA, CHELAD PO, KOTHAMANGALAM.
4. MARY JOSE AGED 48 W/O JOSE,  
NELLIKATTIL HOUSE, KARINGAZHA, CHELAD PO,  
KOTHAMANGALAM.

BY ADV. SRI.ALEXANER JOSEPH

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION  
ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN, J.**

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Con. Case (C) No. 1397 of 2007

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Dated this the 16th day of October, 2007

### JUDGMENT

This case is filed on the allegation that Annexure A order issued by me and followed up by Annexures B and C orders by learned brother Mr.Justice M.Sasidharan Nambiar have been following which as much as, according to the petitioner, there was a trespass to the property in question and certain road or pathway have been cut open.

2. In the R.S.A. No. 1005/2006 a commission was issued and it is seen from the records of that case that a report has been duly placed.

3. The subject matter of the Second Appeal is gaining attention in that case whether there was any violation of the interlocutory orders issued in the Second Appeal is essentially one which is a mixed question of facts and law which may have to be held that there was violation of interim orders. I think it is appropriate that any less action would better ordered on an appropriate application under order 39(2)A for cut off proceeding if filed .. and question of any willful disobedience for initiation of Contempt of Court Case can arise only on the basis of any such finding.

4. All of such as, in my view, it does not require the involvement of this Court, having regard to the fact that appropriate remedies are available under 39(2)A in view of the pendency of the Second Appeal. Still further this Court hearing RSA would not be handicapped in exercising any restitutionary jurisdiction if found necessary on the facts of the case.

5. For the foregoing reasons, this Contempt of Court case is closed without saying anything on merits and without prejudice to the petitioner to move any application under Section 39(2)A in the pending Second Appeal.

**THOTTATHIL B.RADHAKRISHNAN,  
JUDGE**

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